

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP, Development Services Director/(954) 797-1101  
Prepared by Annie Feng, Planner II

**SUBJECT:** Resolution - Developers Agreement  
DA 11-1-04, Boys & Girls Clubs of Broward County/6500 Nova Drive/Generally located at the southwest corner of Nova Drive and Davie Road

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA FOR REGIONAL ROAD CONCURRENCY RELATING TO THE SITE PLAN KNOWN AS ADMIRAL'S BOYS AND GIRLS CLUB FOR REMEDIAL MEASURES TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:**

The developer has filed for a plat note amendment for the McFatter Vocational Site Plat. The applicant requests to amend the plat note **from** "This plat is restricted to 164,801 square feet of adult educational facility (147,221 square feet existing, 17,580 square feet proposed) **to** "This plat is restricted to 272,206 square feet of existing adult educational facility and proposed 23,760 square feet of community facility use." The plat amendment is required for the proposed site plan (SP 3-5-04) for a freestanding 18,760-square-foot Boys and Girls Club located on the McFatter Vocational site at the southwest corner of Nova Drive and Davie Road.

In order to satisfy concurrency for the plat note amendment, the developer is entering into a Regional Road Concurrency Agreement to build a second northbound right turn lane on Davie Road at State Road 84. The developer has agreed to construct the off-site improvements described in the Exhibit "B" of the attached Agreement prior to receipt of a certificate of occupancy for the Admiral's Boys and Girls Club. In addition, the developer will provide to Broward County a letter of Credit in the amount of \$161,581, which represents 125% of the costs of the improvements.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** None

**FISCAL IMPACT:** None

**RECOMMENDATION:** Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

**Attachments:** Resolution, Regional Road Concurrency Agreement.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA FOR REGIONAL ROAD CONCURRENCY RELATING TO THE SITE PLAN KNOWN AS ADMIRAL'S BOYS AND GIRLS CLUB FOR REMEDIAL MEASURES TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The School Board of Broward County, Florida desires to amend the McFatter Vocational Site Plat (027-MP-95); and

WHEREAS, the site is located within the MaFatter Vocational Site has exceeded its allowable buildable square footage; and

WHEREAS, Broward County requires remedial measures to satisfy concurrency requirements related to the McFatter Vocational Site Plat.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Broward County, The School Board of Broward County, Florida, and the Town of Davie, whereby the developer will construct the off-site improvements described in the Exhibit "B" of the attached Agreement prior to receipt of a certificate of occupancy for the Admiral's Boys and Girls Club and provide to Broward County a letter of Credit in the amount of \$161,581, which represents 125% of the costs of the improvements.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

Return recorded document to:

Development Management Division  
115 S. Andrews Avenue, A240  
Fort Lauderdale, FL 33301

Document prepared by:

**NOTICE: PURCHASERS, GRANTEEES, HEIRS, SUCCESSORS AND  
ASSIGNS OF ANY INTEREST IN THE PROPERTY SET FORTH ON EXHIBIT  
"A" ARE HEREBY PUT ON NOTICE OF THE OBLIGATIONS SET FORTH  
WITHIN THIS AGREEMENT WHICH SHALL RUN WITH THE PROPERTY  
UNTIL FULLY PAID AND/OR PERFORMED.**

**REGIONAL ROAD CONCURRENCY AGREEMENT  
CONSTRUCTION OF IMPROVEMENTS**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, its successors and assigns, hereinafter referred to as "SCHOOL BOARD,"

AND

\_\_\_\_\_, its successors and assigns, hereinafter referred to as "DEVELOPER,"

AND

The Town of DAVIE, a municipal corporation, created and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "TOWN."

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas; and

WHEREAS, DEVELOPER has applied for approval of an amendment to the McFatter Vocational Site Plat (027-MP-95), hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, SCHOOL BOARD is the owner of the property within the PLAT; and

WHEREAS, on September 7, 2004, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for approval of the amendment to the PLAT does not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code ("CODE"); and

WHEREAS, DEVELOPER and SCHOOLBOARD have conducted a study and have determined that certain remedial measures will mitigate the traffic impacts so that the PLAT or amendment to the PLAT will satisfy Broward County concurrency standards; and

WHEREAS, the Broward County Development Management Division has approved these remedial measures, and finds that its concurrency requirements for the amendment to the PLAT will be met with the execution of, and compliance with, the terms of this Agreement by DEVELOPER and SCHOOL BOARD; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. Construction of Improvements.
  - (a) DEVELOPER agrees to construct the improvements described in Exhibit "B" attached hereto, hereinafter referred to as the "Improvements." DEVELOPER agrees to complete the Improvements prior to receipt of a certificate of occupancy for new development within the PLAT.
  - (b) If the improvements described in Exhibit "B" are on a state road, as that term is defined in Chapter 334, Florida Statutes, DEVELOPER agrees that, prior to recordation of the note amendment, DEVELOPER shall provide COUNTY with proof of having received a permit or letter of intent to permit from the State of Florida Department of Transportation for the Improvements.

- (c) DEVELOPER shall provide to COUNTY, contemporaneously with this Agreement, an irrevocable Letter of Credit, attached hereto as Exhibit A.C. in the amount of \$161,581.00 in a form acceptable to the COUNTY, which represents 125% of the costs of the Improvements.
- (d) The Improvements described in Exhibit "B" shall be installed in accordance with applicable COUNTY, State of Florida Department of Transportation standards and specifications and in accordance with the Development Review Report for the PLAT. The construction plans for the Improvements, including pavement marking and signing plans, shall be submitted to COUNTY for review and approval prior to commencement of construction. Construction shall be subject to inspection and approval by the COUNTY. Pavement marking and signing shall be provided for all of the Improvements and shall be subject to review, field inspections and final approval by the Broward County Traffic Engineering Division, which Improvements shall be consistent with the previously approved plans.
- (e) Developer and SCHOOL BOARD agree that this agreement shall be recorded in the Official Records of Broward County, Florida, against the property described in Exhibit "A" to put subsequent purchasers, grantees, heirs, successors and assigns of any interest in such property on notice of the obligations set forth herein, which shall run with the property until fully performed.
- (f) DEVELOPER and SCHOOL BOARD, their successors and assigns agree that no building permits or certificates of occupancy shall be obtained from the municipality for construction of a new principal building within the Plat until such time as DEVELOPER provides the municipality with written confirmation from COUNTY that engineering plans for the required improvements have been approved by the Broward County Engineering Division and that DEVELOPER has complied with paragraph 2(c) of this Agreement. Failure to comply with the above shall constitute a default of this Agreement. If the property is located within the unincorporated area, the COUNTY shall not issue building permits for construction of a principal building within the Project until such time as the DEVELOPER has complied with paragraph 2(c) of this Agreement.
- (g) If property is located within a municipality, DEVELOPER and SCHOOL BOARD, their successors and assigns agree that no certificates of occupancy within the Plat shall be obtained prior to completion of the Improvements according to the schedule set forth in Exhibit "B." Failure to comply with the above shall constitute a default of this Agreement.

- (h) In the event DEVELOPER defaults under the terms of this Agreement or the COUNTY receives notice that the security will be canceled by the issuing institution, COUNTY shall be entitled to draw against the security for the amount set forth above, plus costs and interest as set out herein. If COUNTY draws against the security and the amount recovered is less than the amount due, COUNTY may maintain an action against DEVELOPER and SCHOOL BOARD in a court of competent jurisdiction for the difference between any sums obtained and the amount due, plus costs and interest accrued from the due date at the rate of twelve (12) per cent per annum.
- (i) DEVELOPER shall ensure that the security remains valid and in full force and effect until DEVELOPER'S obligations are fully satisfied. Expiration of the security prior to DEVELOPER'S satisfaction of such obligations, or notice to Broward County that the security will expire or be canceled prior to DEVELOPER'S satisfaction of all obligations hereunder, shall constitute a default of this Agreement.
- (j) In the event COUNTY draws on the security in accordance with the provisions of this Agreement, DEVELOPER shall be responsible for COUNTY'S reasonable costs incurred in drawing against the security.
- (k) DEVELOPER agrees that any contract(s) for the Improvements shall:
  - 1. Indemnify and hold harmless COUNTY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of DEVELOPER and persons employed or utilized by or under contract with the DEVELOPER in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require DEVELOPER to indemnify COUNTY, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. In the event that any action or proceeding is brought against COUNTY by reason of any such claim or demand, DEVELOPER shall, upon written notice from COUNTY, resist and defend such action or proceeding by counsel satisfactory to COUNTY. The provisions of this section shall survive the expiration or earlier termination of this Agreement.
  - 2. In order to insure the indemnification obligation contained above, the DEVELOPER and/or its contractor shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set

forth below, in accordance with the terms and conditions required by this section.

3. Such policy or policies shall be without any deductible amount and shall be issued by United States Treasury approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Such policies shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insured's.

4. Comprehensive General Liability Insurance. A Comprehensive General Liability Insurance Policy with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or operations.

Independent contractors.

Products and/or completed operations for contracts.

Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Underground coverages.

5. Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned vehicles.

Hired and non-owned vehicles.

Employers= non-ownership.

6. Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers= Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

7. DEVELOPER shall furnish to the Broward County Engineering Division Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

8. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of DEVELOPER is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days= notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days= prior to the date of their expiration.

3. COST ALLOCATION. DEVELOPER and SCHOOL BOARD agree that the cost of the turn lane will be proportionately shared on the basis of their respective traffic impacts. The parties agree that the proposed note amendment generates a total of 311 new peak hour trips. Of that amount, 272 trips (87.5%) are generated by the SCHOOL BOARD, and 39 trips (12.5%) are generated by DEVELOPER. Accordingly, SCHOOL BOARD is responsible for 87.5% of the cost of the improvement and DEVELOPER is responsible for 12.5% of the cost. SCHOOL BOARD agrees to reimburse DEVELOPER up to a maximum of \$141,383.00 (87.5% of the approved 125% cost estimate) within thirty (30) days of receiving notice from DEVELOPER that the payment is due.

4. CONCURRENCY COMPLIANCE. COUNTY finds that the execution of and adherence to this Agreement on the part of DEVELOPER and SCHOOL BOARD satisfies the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, that plats of land shall be designed to provide for the adequacy of the regional road network, at the adopted levels of service, concurrent with the impact of the development. Nothing in this Agreement shall be construed as constituting a waiver or an exemption from road impact fees authorized to be assessed by COUNTY to DEVELOPER under the provisions of Chapter 5, Article IX, Broward County Code of Ordinances.



5. **DEVELOPER and SCHOOL BOARD**, their successors and assigns agree that in the event of a default of this Agreement, no building permits, certificates of occupancy, or any other development permits shall be obtained within the boundaries of the PLAT, until such time that the COUNTY notifies the local government that the default has been resolved.
6. **NOTICE.** Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director of the Broward County Development Management Division  
115 South Andrews Avenue, Room A240  
Fort Lauderdale, FL 33301

Director of the Broward County Engineering Division  
115 South Andrews Avenue, Room 321  
Fort Lauderdale, FL 33301

For the DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the SCHOOL BOARD:

Executive Director  
Facilities Management, Planning and Site Acquisitions  
The School Board of Broward County, Florida  
600 Southeast Third Avenue, 14<sup>th</sup> Floor  
Fort Lauderdale, Florida

With a copy to SCHOOL BOARD Attorney  
Edward J. Marko  
The School Board of Broward County, Florida  
600 Southeast Third Avenue, 11<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

For the TOWN:

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7. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER=S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
8. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida.
9. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney=s Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
10. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.
11. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
12. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.
13. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further

assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

14. ASSIGNMENT AND ASSUMPTION. DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement and recorded in the public records of Broward County, Florida.
15. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, TOWN OF DAVIE, signing by and through its Mayor and Town Manager, duly authorized to execute same, SCHOOL BOARD, signing by and through its Chair, duly authorized to execute same and DEVELOPER, signing by and through its \_\_\_\_\_ duly authorized to execute same.

**COUNTY**

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and  
Ex-Officio Clerk of the  
Board of County Commissioners  
of Broward County, Florida

By \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
Approved as to form by  
Office of County Attorney  
Broward County, Florida  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Assistant County Attorney

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**DEVELOPER-CORPORATION/PARTNERSHIP**

Witnesses (if partnership):

Linda Van Epps  
(Signature)  
Print name: Linda Van Epps

Dayanand Mahara  
(Signature)  
Print name: DAYANAND MAHARA

Boys Clubs of Broward County, Inc.  
Name of Developer (corporation/partnership)

By David T. Hughes  
(Signature)  
Print name: David T. Hughes  
Title: Executive Director  
Address: 1401 NE 26<sup>th</sup> Street  
Fort Lauderdale, FL 33305

28 day of October, 2004

ATTEST (if corporation):

Tim Elmes  
(Secretary Signature)  
Print Name of Secretary: Tim Elmes

(CORPORATE SEAL)

**ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP**

STATE OF FLA )  
 ) SS.  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 28 day of Oct, 2004, by DAVID HUGHES, as Director of Boys Club, a corporation/partnership, on behalf of the corporation/ partnership. He or she is:  
☒ personally known to me, or  
☐ produced identification. Type of identification produced him

(Seal)



**Stan Switzer**  
Commission #DD309038  
Expires: Apr 08, 2008  
Bonded Thru  
Atlantic Bonding Co., Inc.

My commission expires: 4/8/08

NOTARY PUBLIC:

STAN SWITZER  
Print name:





**TOWN**

WITNESSES:

TOWN of DAVIE

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Mayor-Commissioner

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

By \_\_\_\_\_  
Town Manager

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Town Attorney



SCHOOL BOARD

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Carole L. Andrews, Chair  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

ATTEST:

\_\_\_\_\_  
Franklin L. Till  
Superintendent of Schools

APPROVED AS TO FORM:

By \_\_\_\_\_  
School Board Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

All of the McFatter Vocational Site Plat, as recorded in Plat Book 163, Page 17, Broward County Records.

**EXHIBIT "B"**

**IMPROVEMENTS & COST OF IMPROVEMENTS**

Prior to receipt of a certificate of occupancy for new development within the PLAT, construct a second northbound right turn lane on Davie Road at State Road 84, with 500 feet of storage and 100 feet of transition.

EXHIBIT "C"  
SECURITY  
RESOLUTION #05-34